

KAUA'I PLANNING COMMISSION
REGULAR MEETING
Excerpt
October 27, 2015

The regular meeting of the Planning Commission of the County of Kaua'i was called to order by Chair Anderson at 9:19 a.m., at the Lihue Civic Center, Mo'ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Angela Anderson
Vice Chair Sean Mahoney
Mr. Louis Abrams
Mr. Wayne Katayama
Mr. Roy Ho

Absent and Excused:
Mr. Kimo Keawe
Ms. Amy Mendonca

The following staff members were present: Planning Department – Michael Dahilig, Leslie Takasaki, Kaaina Hull, Marisa Valenciano, Jody Galinato; Deputy County Attorney Jodi Higuchi-Sayegusa, Office of Boards and Commissions – Administrator Jay Furfaro, Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

NEW BUSINESS

Zoning Amendment ZA-2015-7: A bill for an ordinance amending Chapter 8, Kaua'i County Code 1987, as amended, to establish a process to permit Homestays in the Commercial Districts, Resort Zoning Districts and Residential Zoning Districts = County of Kaua'i, Planning Department.

Deputy Director Hull: Madam Chair, we are now on Agenda Item F.3.a., Zoning Amendment ZA-2015-7: a bill for an ordinance amending Chapter 8 of the Kaua'i County Code 1987, as amended, to establish a process to permit Homestays in the Commercial Districts, Resort Districts, and Residential Zoning Districts. The applicant is the County of Kaua'i, Planning Department, and there is a Supplement No. 1 to the Director's Report. I am actually handling this particular item.

The report has been received for the record. So just to summarize, originally when the Department introduced the proposed draft amendment, it was to (1) establish development standards for Homestay operations that are similar in nature to those same development standards that are imposed across the board on Transient Vacation Rental operations in being

that they are similar in providing accommodations for transient guests. In addition to establishing those standards, the Department was looking at a possible venue or way to facilitate an over-the-counter review process for Homestay permits in the Residential Zoning District. Currently, there are no development standards and all Homestays have to go through the Use Permit process. We took a few months to meet with various groups, neighborhood type groups, both for...you know, some that had criticisms or objections to Homestay operations to those groups that are in favor of Homestay operations. After having met with these groups and individuals of the public, the Department has the proposed draft amendment, which was submitted to you folks in the packet, and we have ultimately come to the conclusion that facilitating or establishing a route whereby some Homestay permits can be approved over-the-counter that, in fact, it may not be appropriate to propose that type of venue or avenue. So we've essentially recommended removal of the minor/major permitting processes, as well as the quota system as its established in the Census Designated Places, and essentially just establishing that all Homestay applications in the Residential District be done via the Use Permit process, and that we still maintain that they should be outright permitted in the Residential Districts in the Visitor Destination Area. We still hold to those development standards initially proposed be held on these accommodation type units, and we still hold that the possible avenue of having Homestays in the Agricultural Zoning District and Open Zoning District actually be prohibited. And we are available for questions.

Chair Anderson: Do you have questions?

Mr. Ho: Kaaina, you have a minor and a major. The difference being just the number of bedrooms used for occupancy?

Mr. Hull: That was under the original proposal. The minor being two (2) bedrooms or less, and the major being between three (3) to four (4) to five (5) bedrooms. That was essentially a way to facilitate the minor process for some Homestays in the Residential District. Because we are doing away with that over-the-counter permitting process, we are just saying there is no difference between a minor and a major Homestay; a Homestay is a Homestay. If proposed in the Residential Zoning District outside of the VDA, they all have to, essentially, come before this body and be reviewed for approval.

Mr. Ho: In it you have conditions to revoke the permit, and one (1) of them was if neighbors complain of noise in the area. I see in one (1) portion here in rereading it that it almost...it was one (1) complaint and then it seems like there was a neighborhood complaint board; more than one (1) neighbor had to complain. Are you going down the road of the "Barking Dog" thing?

Mr. Hull: No, no, no. Actually the original establishment of that one (1) complaint was under the original proposal of having an over-the-counter process for some applications that the applicant, if they are applying for a minor over-the-counter permit, would have to notify the abutting property owners. If a single property owner objected to the minor over-the-counter process, it doesn't deny it, it just bumps it up to the major, and has the applicant come before this body to apply for a Use Permit. So it wasn't like one (1) neighbor objects and the issue is done. It is one (1) neighbor objects to the possibility of a ministerial over-the-counter review. They would still be able to come before this body and you, as a body, would have reviewed whether or

not it was appropriate for the area. Being that we are getting rid of the over-the-counter process, that mechanism was removed because of the fact that all applicants will have to get Use Permits. Secondly, for all Use Permits that are issued, if there are enough complaints that come say to the Department and the Department determines that, in fact, there may be some compatibility issues, we can bring the application back to this Commission for review and possible revocation. So that is already established under current law.

Chair Anderson: Other questions?

Mr. Abrams: Yes. Kaaina, the Homestay that would happen in a VDA area, why are we differentiating that between getting a permit for in the VDA where regular single-family dwellings that do vacation rentals in the VDA area don't need anything?

Mr. Hull: Currently under the existing...I believe, and I'll have to double-check, but I believe under the existing TVR Ordinance 904 that those in the VDA are not subject to the development standards of the TVR ordinance. That being the case, the Department feels that is somewhat problematic. That development standards for transient accommodation should be applied, as far as having the notice of neighborly...safety responses and what not, and having a public placard identifying that as a TVR or a transient accommodation should be applied. So we are saying granted we recognize it is in the TVR ordinance, quite frankly, the Department's position is it should be and it should also be in the Homestay ordinance as well.

Mr. Abrams: Okay. So someone who is doing a vacation rental of the whole house in the VDA area would not have to go through the same standards as a Homestay?

Mr. Hull: They are not required to do the renewal and they are not required to have those...let me reference the actual...excuse me. So yes, they are not required. If you look at the development standards for Homestays under our proposed 8-18.2, you should have everything from, each bedroom use should have an off-street parking stall, the residential structure shall be serviced by a septic system approved by the State Department of Health, as well as the signage identifying and having 24-hour contact information for emergency purposes, and then there's something concerning providing information for the safety and comfort of your neighbors. Those are all development standards that were established for TVRs outside of the VDA. Quite frankly, the Department is of a position that it should be imposed upon TVRs as well, and we may be returning to the TVR ordinance just as good practice. Right now we have before us the Homestay ordinance, so we are saying all transient accommodations under the Homestay should be subject to these requirements.

Mr. Abrams: Okay.

Mr. Hull: But yes, you are correct, Commissioner. There is incongruity in the two (2) laws. We are not skirting that issue.

Mr. Abrams: Yes, because I see some of these development standards may be onerous for some of the properties that are in the VDA who don't have a...basically a wastewater system, a septic system.

Mr. Hull: Yes. That was one that came up and it actually came up in a lot of discussions for Homestay applications that were before this body. In looking at it in particular, you know, especially with the TVRs, to a certain degree it was a missed opportunity. If you look at someplace like Hanalei Bay, and the amount of wastewater issues that they are having with their water contamination, and that place is virtually 70, 80, possibly 90% transient vacation rental, non-conforming use certificate holders. If that position had been required of them, there's a strong possibility they would not have the pollution issues that they are having right now in the bay. So the Department does look at that with the TVR ordinance as having been a missed opportunity, and there is no reason that we should possibly...because it is incongruous with the TVR ordinance, to say we shouldn't have it imposed upon the Homestay operations.

Mr. Abrams: But those are outside of the VDA.

Mr. Hull: What's that?

Mr. Abrams: Hanalei Bay is outside.

Mr. Hull: Correct, correct.

Mr. Abrams: So that's where I'm...I get it. I would prefer that it would be left up to the Health Department to make those determinations because they already had and allowed occupants in a house. If you are, in effect, renting out a room, it would be roughly the same amount of occupants in that house, whether it was a single-family owner-occupant there with children, or whether or not it was a long-term rental, so the Health Department has done that. Eventually the Health Department has made attempts, and is moving in that direction, to require conversion of wastewater systems that are not...at minimum septic, but I'm not sure whether or not that is this one there.

Let's see. The aspect of agriculture, or prohibited in Ag and Open. Have you considered anything about the smaller lots that are Ag or Open that are much more difficult to farm would be something that might be a criteria size-wise of the lot in order to do something like that? Or would only allow one (1) dwelling?

Mr. Hull: You know, there is some issue with the topography, and the Department acknowledges that. Concerning the size of the lot, that has come up a fair amount in various applications for Special Permits in using the size as a factor in why they cannot actually farm the lot. Yet, we've had testimony before this body say when you had the farmworker housing ordinance where you had actual farmers coming in saying, I have a one (1) acre lot and I can make \$35,000 off of this for that ratio for the farmworker housing. So it has been used as a reason and it's also been demonstrated through other farmers that it can be done as far as the lot size is concerned. The Department is not going to skirt around and say that there may be avenues under which Farmstays can be reviewed, but our position is that while ag tourism can supplant a farm operation's income and help keep that farm alive, over the past several years having watched the outcome of overnight accommodations and because they have become so lucrative that they have ultimately been damaging to ag lands as a whole. And to say while there might be (inaudible), right now we need a cooling off period of saying too much abuse has gone

on. Leaving a certain wedge while simultaneously not tackling a true definition of “ag” that will ensure that it actually is a true, legitimate, bona fide farming operation, without that definition there and a standard for us to hold up, the loopholes and the wedges that can be made by applicants exploiting that lack of definition, that lack of standard, we just don’t want that leeway there, quite frankly. We’ve seen it abused ad nauseam and so we’re saying that right now, we are recommending an all-out prohibition.

Mr. Abrams: The County of Maui has Homestay operations on agricultural land over there?

Mr. Hull: Correct.

Mr. Abrams: And do you know whether or not they are experiencing that same type of problem?

Mr. Hull: In discussions with some of the staff over there, they did acknowledge that some of the standards are to a certain degree...they are grappling with the same problem this County is grappling with, the entire State is grappling with. Without an actual definition of “ag” that succinctly demonstrates that definitively that this is an actual farm, we’ll always be wrestling with whether or not it’s a bona fide farm.

Mr. Abrams: So we have some provisions in here for the Census Designated Place. Is that still part of this Exhibit B?

Mr. Hull: No. So the CDP, or Census Designated Place, was established to create a ratio system whereby we could permit over-the-counter Homestay applications at a certain ratio to the respective CDP; at a ratio of 1 per 300. Because we are doing away with the over-the-counter system, the necessity for a CDP mechanism is no longer there.

Mr. Abrams: I have in Exhibit B on Page 1, we have that, so it’s just defined, but basically not part of the...? It shows it underlined, so I’m not quite sure whether or not that’s in or out or...

Mr. Hull: Exhibit A is our current ordinance draft proposal. Exhibit B was the former one that you folks had.

Mr. Abrams: The former one?

Mr. Hull: Yes, the former one. We’ve amended it, and Exhibit A is what we’re recommending be moved to Council.

Mr. Abrams: Okay, thank you.

Chair Anderson: Any questions on this side of the Commission?

Mr. Katayama: Under the proposed ordinance, how does the Department plan to monitor or regulate the number of Homestays in any geographic location? And does it make a distinction between active Homestays? Because right now, under the current method of Use Permits, it runs with the land. So if a person gets a Use Permit, they sell the property or transfer the property,

and the person that acquires that chooses not to have a Homestay, how do you manage that quota? Is it just a number of Homestay applications that you allow in a neighborhood? Or is it the number of active Homestays? Because revocation of these things become quite tedious.

Mr. Hull: Yes. Being that we are getting rid of the ratio, we wouldn't necessarily be actively monitoring or saying that this amount can be permitted in respect to your neighborhood. As far as them staying active, you are correct in the assessment of the County Attorney that these entitlements run with the land. With the mechanism for renewal, there is that mechanism to essentially...if they fail to renew, to deactivate the permits. But as you folks have become savvy and when we issued that cease and desist (inaudible) to renew, we do also have to include language that they have the right to appeal, and to appeal it to this body in particular; some have opted to do that in the TVR realm. In some of the existing Homestay permits, we know that there are some out there that were permitted several years ago that are no longer active. The entitlement still runs with the land, but they are no longer active. And I think that might speak to...I think at the last meeting, the Chair requested that we look into the licensing issue, which would essentially tackle that notion of running with the land and the problems that can ensue with that. On the planning side, we did have discussions like with the Liquor Department. Quite frankly while it is an avenue, it would require a fair amount of resources and restructure in the Department that right now, given our resources and our lack of staffing right now, we would have to advise against that. I know there may be some legal issues, but as far as resource-wise, the Department isn't ready for that kind of shift.

Mr. Katayama: Well, isn't the central issue on Homestays is a concentration within any given community that will, at some point, bear a burden or be viewed as a burden? I think in one (1) of the letters to the Commission in a Homestay application before us today was a comment of on-street parking, for example. If that is the sort of key metric of whether you should allow Homestays to happen in a neighborhood, wouldn't you want to take a path that will allow you to regulate that on a timelier basis? As opposed to going through a permitting basis, which is, again, very difficult and it could be very lengthy depending on the applicant. Because a simple non-renewal can turn out to be a legal proceeding. As opposed to something less binding and I mean, a license is one word for it, but can we craft a different pathway that keeps the Department focused on planning issues, as opposed to compliance issues. The more and more of these things that we pass, the compliance element to the Department gets more weighty and not less weighty. The traditional, to me, the permit system is great if it is intended to be changing the nature of the use of that community. However, I don't think Homestays are intended to be that, but more of a temporary vehicle where the choice of the homeowner, in this case, because it's quite clearly stated in the ordinance, they can choose either to do it or not. If they do, we should provide them sort of an easy, a less painful way than a permitting process to allow them to do it. But, if they choose to cease, then that will be just as convenient for the Department to extinguish that benefit for them.

Mr. Hull: In response to that, in looking at the licensing was a definite avenue, I think, for that. Like I said, our resources are lacking right now, quite frankly.

Mr. Katayama: I think it's a (inaudible) resource the Department is there.

Mr. Hull: But then also to address...because a lot of this goes into what's happening with the TVRs, and indeed a licensing route would have been a bit more manageable than a permitting route that we're seeing with the TVRs. As far as the Homestays are concerned, while there are individuals that desire to have Homestays out there, you guys are reviewing a fair amount right now, and a lot of that is more of a consequence of our enforcement actions against illegal operations out there. Since the new law was adopted with the new definition of "Homestays", there was this mindset that everybody's going to...because the cap was imposed, right, the cap of ten (10). There was this belief that the Department is going to have problems because there is going to be this rush to the door. As of this date, and that cap was imposed back in April I want to say, April or May, we have gotten three (3) applications. There is no rush to the door, while there is a huge desire for TVR usage and TVR permits. The Homestay demand for permits out there, while there is a demand to get these permits, is nowhere near as high and burdensome as the TVR demand.

Chair Anderson: I'll let...Counsel, if you wanted to speak to the license issue as well. I know you've done some research on this.

Deputy County Attorney Jodi Higuchi-Sayegusa: Sure. So when you are dealing with private property and especially when you are dealing with governing use under the County zoning authority, really it's something that it's a right, more of a right that runs with the land. The question on whether the County can issue something less of a property right, there's various case law there and other jurisdictions that may...there's other decisions out there with varying results, but the majority and kind of a fundamental starting point and a principle is that these permits are entitlements that run with the land. But there are other mechanisms that the County could institute that will help to maintain a level of control under...and be within the authority of the zoning and police powers authority; whether that be issuing time restraints, reasonable, and it has to be linked to some sort of public benefit or public welfare and safety, an interest that's consistent with the police power and the zoning interests. But you could look at reasonable time limits, something like the renewals that will allow for...if somebody like you, say in your question, if there is somebody that is trying to...it's resold and they don't engage in the Homestay operation and they don't submit for renewal, then it would be kind of a phase out. They would be, technically, in non-compliance. If later on down the road they try to engage in the use again, but without the renewal, they will be given a chance to appeal that. When you are dealing with the property right, which again, runs with the land, you need to afford for constitutional, procedural processes allowing the party to review it and to appeal. That's, I guess, the short synopsis of what I've researched so far. Again, you can look at time limitations, you could target a specific impact by putting an appropriate condition in place per permit.

Mr. Katayama: Is there a way to distinguish the underlying use of the land versus what is happening on top of the land? For example, a zipline. When we grant a Special Use Permit for that in an Ag Zone or Conservation Zone, technically, that goes on forever on whatever area that is designated the zipline property. Okay, and we've done that. If you are a shopping center that says I want to apply for a Liquor license, it's still a Commercial Zoned property and you are allowed to have certain activities, but within that, you have a Liquor license element that extinguishes with that person. It doesn't stay with the shopping center. What are those kind of differences in property use than what we are talking about in the Homestays? Because it's

really...we are not changing the underlying fundamentals of that property. It's still residential or...it's just that they want to allow a temporary stay.

Ms. Higuchi-Sayegusa: Right. So the Counties are only...we have limited authorities. We exist because we are given certain powers. When you look at licensing, in particular Liquor licensing, the Counties get to have the authority to license liquor because it's given to us; i.e. The U.S. Constitution may even allow for the States to regulate liquor, and then the State gives it to the Counties, specifically creating the Liquor Commissions. We receive our power to zone through the State giving that power over to the Counties, and so we don't have an inherent power to license businesses.

Mr. Katayama: But we have an inherent power to license real estate; metes and bounds.

Ms. Higuchi-Sayegusa: We have the power to zone, which is to direct in which areas certain types of activity.

Mr. Katayama: No, no, but within that area, I mean, a lot of these applications are licenses, which can be extinguished.

Ms. Higuchi-Sayegusa: We look at land use, so that the types of...so I'm distinguishing it between licensing the business, which is the liquor analogy, versus the types of...

Mr. Katayama: Well no, let's take the zipline.

Ms. Higuchi-Sayegusa: Okay.

Mr. Katayama: If an applicant comes in with a license to operate a zipline and that license is extinguished with the owner, the licensee, what happens to that Use Permit?

Ms. Higuchi-Sayegusa: The entitlement to engage in an activity runs with the land, whether they require other business licensing, I'm not sure, State licensing of some sort. That's a separate issue, but it's where certain activities can take place and whether that entitlement remains there.

Mr. Katayama: Can the licensor move that designation anywhere they want and maintain the use?

Ms. Higuchi-Sayegusa: No. Well, as far as the zoning, you know, the zoning which is where that...

Mr. Katayama: No, I'm saying...I'm talking specifically on the Use Permit that we granted.

Ms. Higuchi-Sayegusa: I'm sorry. To be honest, I'm not familiar with the exact parameters of what that permit said or I wasn't part of that discussion back then, but...

Mr. Katayama: No, I mean, that's okay. I don't want to take any more time, but I guess I'm trying to get the differences...I understand the entitlements with the land and in some cases

that's very important because it ensures unbridled use that we've agreed that it's appropriate for that designation. Others to me are more fungible, and the further you get closer to a very fungible activity within a community, I think the Department should have ability to regulate that with the least amount of procedural issues. That's what I'm trying to weigh. I'm not trying to rewrite Constitution, I'm not trying to rewrite law. I'm just trying to keep the County Planning Department in the planning business.

Ms. Higuchi-Sayegusa: Right, right. And like I said, there are mechanisms that the Department has looked at, or you folks can also look at, in amending whatever iteration of the amendment is; i.e. the renewal, but also accounting for the appeal process to phase out or to revoke any entitlement, what other conditions you can impose or structure into the ordinance to help achieve that.

Mr. Katayama: If we are tying this to property rights, I think it should be very onerous to take that away. I think that's very important. If we are saying that you can use it, I think I'm a little more flexible on that. That's the only thing I'm saying.

Mr. Hull: I think what it ultimately buries down to is the fact that we can establish...in discussing with Jodi offline, we can establish a licensing procedure, but we would have to be first entitled to do that. So we'd first have to take a measure of saying, yes indeed they are outright permitted zoning-wise in the Residential District, and now let's thereafter establish a licensing procedure to permit some of these.

Mr. Katayama: Fair enough. One (1) last thing is that we had testimony this morning from three (3) people and I thought some of their additions to the ordinance were...should receive some kind of consideration. I don't know the mechanism to do that because it's really difficult to sort of...they were using a form of the ordinance that has been already replaced. So just kind of looking at the (inaudible) versions made me go cross-eyed, but I think you guys should take a look at it and see if any of these are worthy enough to be incorporated in the ordinance moving forward.

Mr. Hull: Yes, and definitely to that point, Commissioner, the Department, right now in looking at it briefly, wouldn't necessarily have an objection to those proposals. What they are essentially trying to do is they are trying to use the quota system to establish...using our ratio quota system that we had originally proposed for the minor permitting process, they want to take that...they are proposing to use that as a quota system for Use Permits, so that there actually would be a limit island-wide on how many of these permits would be given. The Department wouldn't necessarily have an objection. If the Commission wants us to entertain that further, we can. I can say that what they are specifically proposing...the way that they would legally draft it, it would need to be reworked to capture their intent, but that's for this body to discuss whether or not you would want to go to that level.

Mr. Katayama: Thank you.

Mr. Abrams: Kaaina, prior to this, before you eliminated it, did you look at the CDPs and how many Homestay operations would be allowed under that process? Because I know we had asked about how many census districts there are, CDPs...

Mr. Hull: We didn't actually break down the specific number because if you take the ratio of 1 per 300 and then you take our census population for the island, which is 70,000, you have roughly 233 some odd Homestays. But there are some CDPs that wouldn't qualify for it, right, like Pākalā would not qualify for it because they don't have...at least what we were proposing originally is you have to be a CDP of over 1,000 residents in order to begin to qualify for Homestay applications, and then at a ratio of 1 per 300. So no, Commissioner, sorry, we didn't breakdown the specifics of...

Mr. Abrams: If you do decide to incorporate some of that in, I'd like to be able to have an opportunity to take a look at it and see what that would mean to the island in regards to total of units that would be available.

Mr. Hull: I can state that the Department wouldn't necessarily have an objection to the intention of what those individuals were proposing, but also say the Department is ready for our proposal as well if this body is ready to act on it and to move it up to Council. So I think it's just the prerogative of this Commission if you'd like to take action on our recommendation as officially submitted to you, or if you are directing the Department to incorporate some of those...the intention of the public's testimony today.

Mr. Abrams: So your evaluation was...1 per 300 in discussion with the public has been apparent concerns over the inequity of the matter then is mainly the...

Mr. Hull: That's the one (1) issue that would arise, possibly, of what those testifiers are proposing is that there was at least fears in the public in various groups of talking of equity and distribution. Say if you do have a quota system, one (1) applicant can come in, and be the last person, and might have what is not the best or most compatible use, and it's approved. And then the guy behind him could have a far more compatible, far more marketable product, but have no chance of getting it. So that would be one (1) of the issues with the quota system.

Mr. Abrams: And with the larger properties, they'd all come in front of the Commission, so there would be some sort of further evaluation on larger homes, right?

Mr. Hull: Right.

Mr. Abrams: Okay.

Chair Anderson: I had a question on one (1) of the recommendations that was made in the public testimony today was the increase of the renewal fee. What's the Department's stance on that? On whether or not there's proportionality and how that number, as opposed to the \$750.00 amount was arrived at?

Mr. Hull: The \$750.00 amount was arrived at in the same review process that the transient vacation rentals were submitted to. They are required to...virtually an identical renewal process, as far as the development standards they have to submit, the paperwork they will be required to submit to the Planning Department, the review on behalf of the Department, so we assessed that it should be in the same amount, \$750.00. This is one (1) area somewhat vice versa to our position on the septic system, whereas the TVRs are being required to submit \$750.00 and quite frankly, there is probably less work that is going to go into...or possibly less work...excuse me, the same amount of work will be going into it and so we shouldn't be punishing, necessarily, the Homestay operations. If this body wanted to entertain pushing the TVR up to \$1,500.00, we can have the discussion on a later agenda.

Mr. Abrams: Well it seems like you are going to be reviewing it along the same standards of any renewal, so the amount of workload is going to be about the same no matter what.

Mr. Hull: Yes.

Chair Anderson: Are there any further questions from the Commission on this matter?

Mr. Katayama: How would the Chair like to address some of the recommendations provided by testimony this morning, relative to the proposed ordinance?

Chair Anderson: Just a question to the Department. The recommendations that were given today, was this the first time the Department has seen these changes?

Mr. Hull: The Department met with those individuals over the course of the past few months, and we discussed our draft proposal last week, and they've kind of given the thumbs up on that. They kind of did today, but also saying let's go a little bit further and we only saw this, this morning.

Chair Anderson: Okay. Just in terms of my particular take, I know this is a process that's going on and even after we make our recommendations, it's going to continue to be amended. I think it's important to, perhaps, take some additional time to see if there are some changes to be made to incorporate; that would be where I would stand.

Mr. Abrams: Madam Chair?

Chair Anderson: Yes.

Mr. Abrams: Kaaina, were these ones that were brought up some of the same issues? I mean, just because you only saw these in this particular draft, it wasn't that you didn't think about almost all of these things in regards to putting together Exhibit A, I guess, at that point where we have carrying capacity, census designated place, definition of a Homestay, quota system, you know, that type of thing.

Mr. Hull: There are some things in here the Department would say probably shouldn't be done. I think one (1) of the proposals state to amend the public hearing notice requirement to 500 feet

around the proposed site, which isn't necessarily a bad idea, but it holds them at a different standard from other Use Permits required at the 300 feet. Like somewhat of the \$1,500.00 recommendation, if this body wants to look at expanding the public notification for all applicants to 500 feet, we can entertain that, but to single out Homestays in that manner, we would disagree with. There's things like the carrying capacity, which is an important idea in land use planning; however, using it within specific regulations becomes a bit dicey because there are no specific measures for the Department or this body to look into. So there are some things that the Department does have an issue with. As I take it on the face value, the biggest thing it's proposing, and what seems to be most central to it, is imposing a quota system on the Use Permits approved. I guess the Department doesn't necessarily object to that. There will be, I think to a certain degree, some questions of equity from members of the public of imposing a quota system. So I think for the Department, in an action from this body, the Department is still recommending the Exhibit A draft proposal; however, if this body would like the Department to go back to incorporate this quota system, we can do that as well, but that's essentially the prerogative of this body.

Mr. Abrams: Basically what you are saying is we are going to have to tell you to do that.
(Laughter in background)

Chair Anderson: One (1) of the things that comes out in...the quota system, it does present some problems and we've discussed, and that was part of why we've asked the Department to look into the licensing because at least then it's not a permanent permit that runs with the land; that there could be some turnover in the licensing. But I think I'd like to see the analysis with respect to how the quota system would align with, for example, smart growth policies. If we want to look at trying to locate our TVRs in certain areas in which there are, for example, walkability, so that we are reducing demands on the roads and traffic. So if we want to, kind of, be proactive and give a preference for Homestays in particular areas because they will alleviate some issues in traffic. I think that may be a concern, but I'd like to see the analysis there because there may be other issues that the particular people staying in the Homestays may still require cars because they want to see all over the island, or not necessarily working, those types of things.

Any other questions? Comments for the Department? If the Commission...if we are not going to entertain a motion here to make recommendations, then I would want to ask the Commission if we do have a motion. If we do not, it appears that there may be some additional work that we'd like to see on this.

Mr. Abrams: Well I'm prepared to go ahead and make a motion to accept what is in Exhibit A from the Department's recommendation after reading all of that, so I would make that motion.

Chair Anderson: Do I have a second?

Mr. Mahoney: I would second that motion.

Chair Anderson: Discussion?

Mr. Abrams: My discussion is, I mean, I've looked at all of those. What you were talking about, I think, may come down the line a little bit later, but in terms of smart growth and walkability, although the given is if somebody's visiting here, they are going to want to get around and see the island. Unless we have systems that allow that, you're going to have that. But I consider that somewhat minor to the fact that what's going to be there because a lot of these old areas right now are going to be, whether they are on ag land or they don't have a septic system, they are going to be ruled out, so ultimately, I don't think it's going to be a real big deal. I think that this would be something that I see coming in the future and these particular criteria seem to be perfectly adequate.

Chair Anderson: Okay.

Mr. Katayama: From a carrying capacity, how is the Commission gaining a sense of what is the appropriate number of permits to issue in any given neighborhood? I mean, what help are we going to get if we don't add language like carrying capacity? At least develop a metric in some form that's appropriate. How are we going to make a reasonable decision on if it's an appropriate level or not?

Mr. Hull: Commissioner Katayama, to that point, I think the closest that could come to that would be a quota system or at least a ratio, and once you hit that ratio. Because ultimately if you are saying there is a carrying capacity, then what you're getting into...

Mr. Katayama: Well, is that a true statement? Is there a carrying capacity? I mean, should we be concerned about that? I don't want to get too philosophical. I mean, in our planning process, that is always the challenge is how do you match infrastructure needs with population growth or usage growth? And I don't know, this is more visceral than probably factual, but I tend to believe, and you guys correct me if I'm wrong, that in a transient situation, the infrastructure usage is going to be higher because of the nature of the residence now, occupants change. When you have a residential household, you assume a family-type population. When you have a Homestay, that changes again, but I don't know if when we engineer these things through our building permitting process that we comprehend maximum use or average use. I know in commercial enterprises they take a more conservative approach to like water usage or wastewater. For residential, I don't know how we treat that. Again, I'm doing this more out of ignorance. But again, should I be concerned about if every house in my neighborhood says that they should be a Homestay, is that an impact?

Mr. Hull: To the point of carrying capacity, which is why it's important to have it through the Use Permit process is because it gets vetted by all of those agencies from Wastewater to Department of Health to the Fire Department to Engineering, which is in charge of the roads, and so on and so forth; and the Water Department to ensure that the infrastructure is there as you guys have become accustomed to it. If it isn't, they impose that requirement on the applicant. Speaking to the other nature of social carrying capacity, that's something that we don't really have numbers for. We can, I think as the Director likes to say, through our na'au we can tell there are some places that are reaching their social carrying capacity of transient accommodations. I think somewhat on face value you can say Hanalei, to a certain degree, reached its carrying capacity socially for...

Mr. Katayama: Well to me, the example would be vehicles. If you have a family of four (4), you probably have two (2) vehicles. If you are renting out a four (4) bedroom house to eight (8) adults, you might have eight (8) vehicles. That certainly, to me, most residential homes do not provide eight (8) parking spaces; therefore, you have on-street congestion. I mean, Seattle is a classic example of that. We saw that during our meetings. Is that something that we need to be concerned about? I mean, who looks at that? Does Public Works look at that? Does Water look at that?

Mr. Hull: Specifically for the parking example, there is the requirement of one (1) per bedroom. Generally, the Department sees it as a couple or a family that's in a bedroom, and they will probably just have one (1) car between that family. Engineering will also look at whether or not the roads can accommodate on-street parking or what not.

Mr. Katayama: As we, for example, encourage long-term rentals where you have now four (4) adults in two (2) bedrooms, wouldn't that equation sort of shift and consumption pattern shift? I don't know. Again, I'm looking for a Department to provide that guidance.

Mr. Hull: Yes, for the long-term rentals, there is an issue at hand, which is why, to bring the discussion kind of back to, specifically, the Homestays is why looking at it through the Use Permit lens where you can look at each situation case-by-case, and analyze whether or not the infrastructure is appropriate.

Mr. Katayama: So we, intellectually, determine that cap, whether that neighborhood has reached a carrying capacity?

Mr. Hull: I'll say it's fair to characterize the Planning Commission in that manner.

Mr. Abrams: But the extra stall required to have a Homestay would be off-site. It would not be on the street, right?

Mr. Hull: Correct.

Mr. Abrams: So that would have to be approved for someone who rented that, whereas if it was something different than a Homestay, then there is no regulation in regards to that. So then what we are back to is taking a look at the amount of cars that would be going through there, in terms of the carrying capacity of a particular neighborhood. I don't know whether I could come up with some sort of criteria to sort of figure that out. It would almost be a wash, if not less. Simply because I don't believe that the Homestays are going to be occupied 100% of the time either. I mean, I know we are moving in the General Plan to a lot more discussion in regards to all of these issues that are coming up, in terms of the studies that are in the baseline things that are coming up. I suppose we make it into some sort of carrying capacity, but then there would be an argument that would get into the situation of what is the difference between some house that has a bedroom that an owner-occupant is in that either is available, or would not be because he is going to rent it out, as to what would be the difference between capacity, in terms of what that house would be generating, right? I don't know whether or not there would be an easy way to go ahead and come up with something that would stick. Anyway, I think that what we have

right now, and I would suppose that Council is going to weigh-in on this anyway, and in effect, have a lot of discussion, and put the final stamp on it. I would believe that with some of the speakers that are here, they are going to be speaking in front of the Council, too, at this point right now. I'm of the opinion to go ahead and get started, send it on over to them.

Chair Anderson: Okay. Is there any further discussion?

So we've had a motion and a second. We will go ahead and do a roll call vote on the recommendation, on the motion.

Mr. Hull: Commissioner Mahoney?

Mr. Mahoney: Aye.

Mr. Hull: Commissioner Katayama?

Mr. Katayama: Aye.

Mr. Hull: Commissioner Abrams?

Mr. Abrams: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.


Mr. Hull: Commissioner Anderson?

Chair Anderson: Nay.

Mr. Hull: You have four (4) ayes and one (1) nay.

Chair Anderson: So the motion passes. Thank you very much.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk